IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 20286 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ABHESINHMAGANBHAICHAUDHARY & 1 - Petitioner(s)

Versus

DIRECTORAGRICULTURALMARKETINGANDRURALFINANCE & 4 - Respondent(s)

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Appearance :

MR DILIP B RANA for Petitioner(s) : 1 - 2.
MR. DIPEN DESAI, ASST. GOVERNMENT PLEADER for Respondent(s) : 1,
None for Respondent(s) : 2 - 5.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 07/10/2005

ORAL JUDGMENT

1.Rule. Shri Dipen Desai, learned AGP waives service of Rule on behalf of respondent No.1.

2.In this petition under Article 226 of the Constitution of India, the petitioners have prayed for an

appropriate writ, direction or order restraining the respondent Nos.3 to 5 being nominated members from casting their votes in the election of Chairman and Vice-Chairman of Agriculture Produce Market Committee, Vyara and they have further prayed for a declaration that the nominated members shall have no right to vote at the election of the Chairman and Vice-Chairman of the Market Committee.

3. It is required to be noted that as such the controversy in question is covered by the decision of the learned Single Judge of this Court in case of ***Atmarambhai Maganlal Patel & Others*** V/s. ***State of Gujarat & Others*** reported in ***2002 (3) GLR Page-1914*** and it is held by the learned Single Judge of this Court that the nominated members are the members of the Agriculture Produce Market Committee and they are entitled to cast their votes such as elected members of the Agriculture Produce Market Committee and there is no such distinction. However, Shri Dilip Rana, learned advocate appearing on behalf of the petitioners has tried to distinguish the said judgment by making an additional submission that as per Section 11(4) of the Agriculture Produce Market Act the term of the members of the Agriculture Produce Market Committee is for four years and from the date of notification declaring them as

elected members and the new Agriculture Produce Market Committee is constituted and only after the first meeting of members of the newly elected Market Committee is held and therefore, even if it is considered that the nominated members are the members of the Agriculture Produce Market Committee, they are required to hold the posts as members only after the first meeting of the Agriculture Produce Market Committee is held. Therefore, till the first meeting of the Agriculture Produce Market Committee is held, the nominated members have no right and they cannot be considered as members. Though, prima facie, the submission seems to be very attractive but it has no substance. As held by the learned Single Judge of this Court in the aforesaid case, there is no distinction between the nominated members and the elected members and the nominated members have all the rights which are available to the elected members inclusive of rights of casting their votes in the election of Chairman and Vice-Chairman.

4. In view of the judgment of the learned Single Judge of this Court in the aforesaid case and the reasons stated in the said judgment, the present Special Civil Application is required to be dismissed and is,

accordingly, dismissed. Rule is discharged. However, there will be no order as to costs.

(M.R.SHAH, J.)

kdc.